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*Attorneys for Defendants*  
*Allnurses.com, Inc. and Brian Short, R.N.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

EAST COAST TEST PREP LLC d/b/a  
ACHIEVE TEST PREP and MARK  
OLYNYK,

Plaintiff,

vs.

ALLNURSES.COM, INC., BRIAN SHORT,  
R.N., ABC COMPANIES 1-10 and JOHN  
DOES 1-10,

Defendants.

Civil Action No. \_\_\_\_\_

***Document electronically filed.***

**NOTICE OF REMOVAL**

[Previously pending in the  
Superior Court of New Jersey, Law  
Division, Passaic County, L-004359-14]

**TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**PLEASE TAKE NOTICE THAT** Defendants Allnurses.com, Inc. and Brian Short, R.N. (collectively “Defendants”), by and through their attorneys, Robinson Miller LLC, removes this action from the Superior Court of New Jersey, Law Division, Passaic County to the United States District Court for the District of New Jersey, pursuant to 28 U.S.C. §§ 1441 and 1446 on the grounds of federal question jurisdiction. In support of this Notice of Removal, Defendants state as follows:

### **Background**

1. On November 25, 2014 Plaintiff East Coast Test Prep LLC filed a Verified Complaint and Order to Show Cause in the Superior Court of New Jersey, Law Division, Passaic County (the “State Court Matter”). That complaint raised three causes of action, each of which was brought under New Jersey law: Defamation (Count I); False Light; (Count II); and Tortious Interference with Prospective Economic Relations (Count III).

2. On April 9, 2015, Plaintiff East Coast Test Prep LLC filed a First Amended Complaint in the Superior Court of New Jersey (“Amended Complaint”). Among other things, the Amended Complaint added Mark Olynyk—the owner of East Coast Test Prep LLC—as a Plaintiff, and raised sixteen new causes of action. Plaintiffs’ Amended Complaint is the operative pleading. *See Inglese v. Kulpa*, No. 13-1927, 2014 WL 1669919, at \*2 (D.N.J. Apr. 25, 2014) (“there can only be one operative complaint in a matter”); *Little v. Conn. Gen. Life Ins. Co.*, No. 11-2944, 2011 WL 5025125, at \*5 (D.N.J. Oct. 21, 2011) (“[T]here can only be one operative complaint, which is now Plaintiffs’ amended complaint.”).

3. On or about April 9, 2015, Defendants’ counsel, Keith J. Miller, Esq., received a copy of the Amended Complaint on behalf of the Defendants.

4. Plaintiffs’ eighty-four page Complaint is disjointed, containing sixteen causes of action ranging from defamation (Counts I & II), libel (Count III), and breach of contract (Count V), to alleged violations of the New Jersey Consumer Fraud Act (Count IX) and the Lanham Act (Count X), among other things. Copies of the Amended Complaint and all other documentation served upon the Defendants in the State Court Matter are attached hereto as Exhibit A.

### **JURISDICTION**

5. This Court has original jurisdiction over this action under 28 U.S.C. § 1331 because

Plaintiffs' Amended Complaint seeks relief for trademark infringement based upon a purported violation of the Lanham Act, 15 U.S.C. § 1125(a).

6. This Notice of Removal is being filed within thirty days after the Defendants received service of the Amended Complaint. *See* 28 U.S.C. § 1446(b); *see also McLaughlin v. Jones*, No. 14-3430, 2015 WL 404913, at \*6 (D.N.J. Jan. 29, 2015) ("Section 1446 mandates that a defendant has thirty days to remove an action after receiving a copy of an amended pleading, motion, order or other papers from which it may first be ascertained that the case is one which or has become removable."); *Wright v. Thomas*, No. 13-804, 2013 WL 6279203, at \*3 (M.D. Pa. Oct. 24, 2013) ("Thus, when an amended complaint for the first time clearly articulates a federal cause of action, the time for removal will run from the date of the filing of the amended complaint."), *adopted by* 2013 WL 6281117 (M.D. Pa. Dec. 4, 2013); *Whittaker v. CCIS of N. Phila.*, No. 10-1095, 2010 WL 1644492, at \*2 (E.D. Pa. Apr. 22, 2010) ("*Defendant sought removal of the litigation to federal court on March 12, 2010, on the grounds that the Amended Complaint alleged, for the first time, a federal cause of action pursuant to the FMLA. Removal was granted under this Court's federal question jurisdiction pursuant to 28 U.S.C. § 1331*") (emphases added).

7. The named Defendants need not obtain consent from either the John Doe Defendants or ABC Company Defendants because these Defendants are both unknown and have not been served with the Amended Complaint at the time of removal. *See Green v. Am. Online (AOL)*, 318 F.3d 465, 469 (3d Cir. 2003) ("[T]he general rule that all defendants must join in a notice of removal may be disregarded where, as here, the non-joining defendants are unknown."); *A.B. v. Verna Gray Charter School*, No. 10-5938, 2011 WL 2149474, at \*2 (D.N.J. May 11, 2011) ("the Rule of Unanimity does not apply if, at the time of removal, a non-resident has not been served.").

8. Since the filing of Plaintiffs' Amended Complaint, no other filing has been made in the State Court Matter, and no other proceedings have transpired in that action. The Plaintiffs are currently represented by Richard L. Ravin, Esq., Law Offices of Hartman & Winnicki, P.C., 74 Passaic Street, Ridgewood, New Jersey 07450.

9. Removal to the United States District Court for the District of New Jersey is proper because Plaintiffs' action is pending in the Superior Court of New Jersey, Passaic County.

10. Defendants will submit written notice of this Notice of Removal to the Superior Court of New Jersey and Plaintiffs' counsel as soon as practicable, in accordance with 28 U.S.C. § 1446(d). A copy of that written notice is attached hereto as Exhibit B.

11. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. 1446(a).

**WHEREFORE**, Defendants respectfully request that this action be duly removed from the Superior Court of New Jersey, Law Division, Passaic County to this Court, and that it proceed herein.

Respectfully submitted,

Dated: May 7, 2015

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